

BILL ANALYSIS

S.B. 246
By: Alvarado
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

During the 86th Regular Session, S.B. 2119 transferred the motor fuel metering and quality program from the Department of Agriculture to the Texas Department of Licensing and Regulation (TDLR). This transfer gave TDLR responsibility over the regulation of fuel quality and quantity, motor fuel metering devices, service companies and service technicians in Texas. Prior to the transfer to TDLR, the program was regulated under Chapters 13 and 17, Agriculture Code. S.B. 2119 transferred portions of the Agriculture Code to the newly created Chapter 2310 of the Occupations Code and some sections were amended while others were transferred in their entirety. Unfortunately, this transfer created redundancies and the potential for unnecessary regulations within state law, specifically regarding TDLR's role over the regulation of liquid petroleum gas. S.B. 246 seeks to address this issue by amending Occupations Code provisions relating to motor fuel metering and quality to clarify TDLR's regulatory authority. Within Chapter 2310 of the Occupations Code, the bill, among other provisions, amends definitions and terms, ensures industry terminology is used consistently throughout the chapter, removes TDLR's role in conducting investigations of fuel theft by consumers, eliminates outdated references to weight as a method of measure for motor fuel, authorizes TDLR to issue an immediate stop-sale order if there is a visible problem with the motor fuel being sold, removes the requirement for the state metrology laboratory to purchase standards on behalf of TDLR, allows TDLR to directly collect fuel samples as a result of a complaint, authorizes TDLR to inspect a device it believes is being used to perpetuate fraud, and removes TDLR's regulation over liquid petroleum gas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 12 and 22 of this bill.

ANALYSIS

S.B. 246 amends the Occupations Code to revise provisions relating to the regulation of motor fuel metering and quality by the Texas Department of Licensing and Regulation (TDLR) as follows:

- removes TDLR's authority to contract with the holder of a service company license or service technician license issued by the Department of Agriculture to perform TDLR's duties related to motor fuel metering devices, removes references to the inspection of an individual or business holding such a license from provisions relating to inspection of standards used to perform device maintenance activities, and removes the exemption for such a license holder from the requirement to hold a license issued under Occupations

Code provisions regarding motor fuel metering device service technicians and motor fuel metering device service companies;

- repeals a provision that requires the Motor Fuel Metering and Quality Advisory Board to meet at the call of TDLR's executive director or the presiding officer of the Texas Commission of Licensing and Regulation (TCLR);
- removes weight as a method of measure for motor fuel and accordingly removes references to weight and weighing devices in related provisions and changes the manner by which compressed natural gas and liquefied natural gas are required to be sold from weight to gallon equivalent;
- establishes that provisions relating to motor fuel metering and quality do not apply to a weighing or measuring device, as defined by Agriculture Code provisions relating to weights and measures, that measures liquefied petroleum gas;
- removes from the conduct that constitutes a violation of false representation of motor fuel quality the taking or an attempt to take, by a person or the person's representative or agent, as a buyer furnishing the weight or measure of a motor fuel by which the amount of the motor fuel is determined, more than the quantity the person represents;
- expands the circumstances under which TDLR may inspect a motor fuel metering device and the records that relate to the use of the device to determine whether the device is in compliance with provisions relating to motor fuel metering and quality to include TDLR having reason to believe that such a device is being used to facilitate the perpetration of fraud;
- removes the specification that the records TDLR may inspect for that purpose are records of the owner, operator, or user of the device;
- repeals a provision establishing the circumstances under which TDLR has reason to believe a motor fuel metering device is being used for a commercial transaction;
- establishes a metrology laboratory certified by the National Institute of Standards and Technology and approved by TDLR as an alternate entity to the state metrology laboratory for purposes of the requirement for that laboratory to inspect and correct standards for motor fuel used by TDLR or an individual or business licensed by TDLR to perform device maintenance activities; and
- repeals provisions requiring the state metrology laboratory to purchase additional sets of standards as necessary for use by a TDLR inspector or other TDLR personnel and requiring TDLR and the laboratory to enter into a memorandum of understanding to implement provisions relating to inspection of standards used to perform device maintenance activities.

S.B. 246, with respect to provisions relating to a stop-sale order regarding motor fuel, does the following:

- includes TDLR having reason to believe the motor fuel is being sold or kept, offered, or exposed for sale, or being sold or offered for sale by or through the use of a motor fuel metering device that is in violation of a rule adopted under provisions relating to motor fuel metering and quality among the reasons an order to stop the sale of motor fuel may be issued and removes the specification that the executive director of TDLR is the individual at TDLR with that authority;
- changes the individual to whom the order is issued from the owner or custodian of the motor fuel or seller of the motor fuel to the dealer or operator of the retail motor fuel facility selling the motor fuel or offering the motor fuel for sale;
- requires TDLR or an authorized representative of TDLR, in implementing a stop-sale order, to do the following:
 - follow the procedures adopted by TDLR for collecting, sampling, and handling motor fuel;
 - obtain the approval of the executive director or the executive director's designee before taking any action under provisions relating to a stop-sale order; and
 - place a tag or other notice on each motor fuel dispensing device subject to an order issued by TDLR under those provisions;

- specifies that a person is an authorized representative of TDLR for purposes of those provisions if the person holds a license as a motor fuel metering device service technician or motor fuel metering device service company and is acting on behalf of TDLR under those provisions;
- changes the process for challenging a stop-sale order from suing in a court where the motor fuel is found or is being sold or offered for sale for a judgment as to the justification of the order and for the discharge of the motor fuel in accordance with the court's findings to appealing the order to the State Office of Administrative Hearings (SOAH);
- changes the prohibition against the recipient of such an order selling the motor fuel until discharged by a court or until the TDLR executive director finds that the fuel or device is in compliance with provisions relating to motor fuel metering and quality by including offering the motor fuel for sale as a prohibited action and by making the prohibition applicable instead until TDLR makes such a finding or the dealer or operator prevails in an appeal under the bill of TDLR's order;
- requires the executive director to set the time and place for a hearing conducted by SOAH to affirm, modify, or set aside the order not later than the 10th day after the date TDLR receives notice of an appeal from a dealer or operator and requires the order to be affirmed to the extent that reasonable cause existed to issue the order;
- establishes that such a proceeding is a contested case under the Administrative Procedure Act; and
- requires TDLR to adopt rules necessary to implement the provisions relating to a stop-sale order.

S.B. 246, with respect to provisions relating to the sale, delivery, and quality of motor fuel, does the following:

- removes references to the regulation of a "jobber" and repeals the definition of that term;
- establishes that a person is an authorized representative of the TDLR for purposes of provisions relating to the inspection of delivery documents relating to motor fuel mixture sales and documents regarding the posting or certification of automotive fuel ratings if the person holds a license as a motor fuel metering device service technician or a motor fuel metering device service company and is conducting an inspection on behalf of TDLR under the respective provisions;
- changes the individuals to whom notice of an inspection of such documents must be provided, as an alternative to being mailed, from any employee at a dealer's station or retail outlet to any employee at a dealer's retail motor fuel facility;
- includes a wholesaler among the individuals required to retain certain documents relating to the posting or certification of automotive fuel ratings and among the individuals prohibited from delivering or transferring to a dealer in Texas motor fuel that has an automotive fuel rating lower than the certification of the rating made to the dealer;
- specifies that the TDLR representative that may collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale to verify that motor fuel complies with TDLR's minimum standards required by law is an authorized representative and establishes that a person is an authorized representative for that purpose if they hold a license as a motor fuel metering device service technician or a motor fuel metering device service company and are conducting testing on behalf of TDLR under provisions relating to testing of motor fuel quality;
- changes the notification required on a TDLR representative's arrival at a facility to conduct testing from a TDLR representative notifying the facility's owner or manager of their presence and purpose to TDLR or an authorized TDLR representative notifying any employee of the facility of TDLR's or the representative's presence and purpose;
- removes the requirement that TDLR's representative follow the most recent applicable procedures specified by the American Society for Testing and Materials International Standard D4057, D4177, D5842, or D5854 for the collection, sampling, and handling of fuel to prepare for laboratory analysis and instead requires TDLR to adopt rules

regulating the methods and procedures applicable to motor fuel testing under those provisions;

- repeals a provision restricting the use of fees collected for testing, inspection, or the performance of other services provided as determined necessary by TCLR in the administration of provisions regarding the sale, delivery, and quality of motor fuel to the administration and enforcement of those provisions; and
- expands the group of individuals who may bring an action against a dealer, distributor, supplier, or wholesaler who violates certain of those provisions from a motor fuel user who purchased the motor fuel and sustained damages or who has a complaint about the product to any person who purchased the motor fuel and sustained damages or who has a complaint about the product.

S.B. 246 does the following with respect to the definitions of certain terms:

- moves the definitions for "automotive fuel rating," "distributor," and "supplier" from provisions relating to the sale, delivery, and quality of motor fuel to provisions generally applicable to motor fuel metering and quality;
- redefines "dealer" from a person who is the operator of a service station or other retail outlet and who delivers motor fuel into the fuel tanks of motor vehicles or motor boats to a person who is the operator of a retail motor fuel facility;
- defines "measuring device" as a mechanical or electronic device used to dispense or deliver a motor fuel by volume, flow rate, or other measure or used to compute the charge for a service related to motor fuel;
- redefines "motor fuel metering device" from a commercial weighing or measuring device used for motor fuel sales to a measuring device used for commercial motor fuel sales;
- redefines "operator" or "user" from a person in possession or control of a weighing or measuring device to a person in possession or control of a measuring device, including an owner, custodian, or seller;
- redefines "wholesaler" from a person who purchases tax-paid gasoline for resale or distribution at wholesale to a person who purchases tax-paid motor fuel for resale or distribution at wholesale; and
- removes the definition for "commercial weighing or measuring device" and repeals the definitions for "weighing or measuring device," "weight or measure of a motor fuel," and "motor fuel."

S.B. 246 establishes that its provisions do not affect the validity of a proceeding pending before a court or other governmental entity on the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense or violation, or any element thereof, that occurred before that date.

S.B. 246 repeals the following provisions of the Occupations Code:

- Sections 2310.001(a)(10), (a)(11), and (b);
- Section 2310.036;
- Section 2310.101(b);
- Sections 2310.106(e) and (g);
- Section 2310.2001;
- Section 2310.203(b); and
- Section 2310.204(d).

EFFECTIVE DATE

September 1, 2023.